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LETTER DATED 8 AUGUST 1996 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to communicate to you the following:

Pursuant to paragraph 12 of Security Council resolution 986 (1995), the Committee was requested to develop, in close coordination with the Secretary-General, expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of that resolution. I am pleased to inform you that after several weeks of intensive deliberations the Committee, at its 142nd meeting held on 8 August 1996, adopted the procedures to be employed by it in the discharge of its responsibilities as required by paragraph 12 of resolution 986 (1995). A copy of the procedures is attached herewith for the information of the members of the Council.

(Signed) Tono EITEL
Chairman
Security Council Committee established
by resolution 661 (1990) concerning the
situation between Iraq and Kuwait

Annex

Procedures to be employed by the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as required by paragraph 12 of Security Council resolution 986 (1995)

SECTION I

Sale of petroleum and petroleum products originating in Iraq

1. The Committee will select, upon recommendation by the Secretariat of the Committee, at least four independent experts in international oil trade, to be appointed by the Secretary-General as "overseers" at the United Nations Headquarters. The number of the overseers will be reviewed depending on the volume of transactions to be processed. The overseers will have the authority and responsibilities set forth in this section.

2. Notwithstanding the obligations of States under the relevant Security Council resolutions, States may, if they so wish, forward to the Committee a list of national oil purchasers (private companies, State-owned companies, State agencies, ministries, etc.) authorized to communicate with the overseers. States may present changes to the list at any time. Once the Committee has taken note of these lists or the changes thereto and passed them on to the overseers, these purchasers are entitled to communicate directly with the overseers. If States do not submit such a list, or if a certain purchaser is not included in the list, the communication with the overseers shall be submitted through the Permanent Mission of the State of purchase.

3. A contract for the purchase of petroleum and petroleum products will only be considered for approval if it has been endorsed by the Government of Iraq, or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. The submission by the Government of Iraq or SOMO of a copy of a contract is acceptable as an endorsement.

4. SOMO's contracts with purchasers will include all the details specified in paragraph 1 (a) of resolution 986 (1995). In particular, the contract shall indicate the export route, the payment by way of a confirmed letter of credit consistent with paragraph 9 below, quantity and quality of petroleum or petroleum products purchased, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

5. The Government of Iraq or SOMO may submit at any time pricing mechanisms for sales of petroleum for review by the Committee. The overseers will assess these pricing mechanisms, in particular whether they reflect fair market value and will provide analysis and recommendations to the Committee. The Committee will then review the pricing mechanism according

to its no-objection procedure within two business days. The pricing mechanism should include the elements listed in paragraph 4 above. In order to facilitate this process, regular consultations between the overseers and representatives of SOMO will take place consistent with paragraph 6 of annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of resolution 986 (1995) dated 20 May 1996 (hereinafter Memorandum of Understanding).

6. When market conditions so require, and in particular during the first month of the implementation of resolution 986 (1995) adjustments to pricing mechanisms may be submitted by the Government of Iraq or SOMO for review by the Committee in accordance with paragraph 5 above. The pricing mechanisms will in any case be reviewed in accordance with paragraph 5 above whenever the Government of Iraq or SOMO submits a revision. Current approved price mechanisms will remain in effect until new ones are approved by the Committee.

7. The Secretariat of the Committee will set up a new fax line to be used exclusively for correspondence with regard to the petroleum and petroleum products transactions. The national oil purchaser or the Permanent Mission of the State of purchase shall forward by fax to the overseers an application for approval, together with a copy of the contract and, if necessary, other supporting documents. States and national oil purchasers shall use only the Standard Application Form annexed to the present procedures. Other correspondence with the Committee shall go through the already existing channels.

8. A contract for the sale of petroleum which employs a pricing mechanism approved by the Committee under paragraph 5 above, will be reviewed by two overseers on behalf of the Committee to determine whether the contract meets the criteria set forth in paragraph 9 below. Such review should be completed within 24 hours. No overseer shall review a contract submitted by or on behalf of an oil purchaser with the same nationality as the overseer or which employed him or her within the last two years.

9. To ensure that all contracts comply with the provisions of resolution 986 (1995) and do not contain any attempt at fraud or deception, the overseers on duty review the contracts and supporting documents to determine that:

- the contract and the documents comply with the requirements provided for in resolution 986 (1995) and in the present procedures, including details of a confirmed irrevocable letter of credit to be opened, with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the escrow account established by the Secretary-General under paragraph 7 of resolution 986 (1995) (hereinafter Iraq account). The letter of credit should contain the information as set out in Annex II to this document.

- the conditions of payment envisaged in the letters of credit are in conformity with the existing market practices;

- the contract price is fair in view of all relevant circumstances, in particular that it is consistent with a currently approved pricing mechanism, and competitive given world prices and market trends and taking into consideration the provisions of paragraph 6 of annex II of the Memorandum of Understanding;

- the transaction does not exceed the limits established by resolution 986 (1995), including the requirements set out in paragraph 6 of the resolution.

10. If the contract and supporting documents reviewed under paragraph 9 above are found to be in order, the overseers, on behalf of the Committee, shall immediately approve the contract and inform by fax the national oil purchaser or the Permanent Mission concerned, as well as SOMO and the bank holding the Iraq account. The Committee and the parties concerned shall be informed immediately upon rejection of any contract by an overseer. In circumstances other than rejection for technical reasons the overseers will make a full report to the Committee for appropriate action.

11. Contracts for the sale of petroleum or petroleum products which do not employ a pricing mechanism approved by the Committee under paragraph 5 above will be reviewed by the overseers who will provide their analysis and recommendations to the Committee. In addition to the factors in paragraph 9 above, the overseers shall consider whether the contract's pricing mechanism reflects fair market value. Such review should be completed within 24 hours. Upon receipt of the analysis and recommendations from the overseers, the Committee will consider the contracts under its expedited no-objection procedure within two business days.

12. Once a contract is approved pursuant to these procedures, the national oil purchaser shall cause a letter of credit consistent with paragraph 9 above to be opened and transmitted to the bank holding the Iraq account. The bank transmits the letter of credit to the overseers. The overseers immediately review the opened letter of credit in order to determine whether it complies with the information given in the application.

13. If the opened letter of credit complies with the information given in the application the overseers inform the bank holding the Iraq account which adds its confirmation to the letter of credit and, for information purposes only, forwards the letter of credit to the Central Bank of Iraq for the purpose of advising SOMO. Furthermore, the overseers send notification of sales approval, together with a copy of the contract and, if necessary, supporting documents to the inspectors at Ceyhan and at the metering station at the Iraq-Turkey border, or at Mina-al-Bakr. If the opened letter of credit does not comply with the information given in the application the overseers shall immediately inform the Committee.

14. The overseers will submit a substantive report to the Committee, in a standardized format, at least once a week on the contracts considered by them, including the cumulative quantity and approximate value of petroleum authorized for export, and inform the Secretary-General accordingly. In

the light of this report, any document submitted as part of an application to the Committee will be available for consultation by Committee members in the Secretariat.

15. The export of petroleum and petroleum products will be monitored by United Nations independent inspection agents, appointed by the Secretary-General, who will be stationed at the loading facilities at Ceyhan and Mina-al-Bakr and at the metering station at the Iraq-Turkey border. Such on-site monitoring will make use of the documents received from the overseers, direct observation, as well as quality and quantity verification. The independent inspection agents will authorize the loading, after they receive the information from the overseers that the relevant contract has been approved, and inform the overseers accordingly. The independent inspection agents will also have the authority to stop the loading of petroleum if there is any evidence of irregularity. They will immediately report any irregularity to the Committee and the Secretary-General.

16. In accordance with paragraph 3 of resolution 661 (1990) and the provisions of resolution 665 (1990) shipments of Iraqi oil must not be performed by Iraqi vessels. In order to facilitate the efficient maritime export of oil under resolution 986 (1995) oil purchasers will communicate to the Secretariat information when available concerning vessels contracted for shipping approved oil exports.

17. The Committee will be informed of the appointments of the independent inspection agents made by the Secretary-General under paragraph 6 of resolution 986 (1995).

18. The independent inspection agents shall report weekly to the Committee, through the overseers, on their assessment of the export operations. When the loading of oil under a contract is completed, they shall inform the overseers on the details for comparison with the original approved contract.

19. Payment of the full amount of each purchase of petroleum and petroleum products shall be made into the Iraq account as provided for in paragraph 1 (b) of resolution 986 (1995).

20. Once a week, the Secretary-General forwards to the Committee and to the Government of Iraq statements of the Iraq account, including outlines of anticipated future payments to and from that account.

21. The regime for the sale of petroleum products will be broadly similar to that described above, and the precise arrangements, consistent with paragraph 6 of resolution 986 (1995), can be elaborated at a later stage, as and when the need arises.

22. The overseers will receive monthly reports from SOMO on the actual volume and type of petroleum and petroleum products exported under the relevant sales contracts.

23. At a meeting, the Committee may provide additional guidance to be followed by the overseers.

24. If any Committee member judges the circumstances to be serious enough, that member may call for a review by the Committee of the system for approving oil contracts established in this section. At an urgent meeting, the Committee will decide, according to its normal procedures, whether to continue or revise the system. In the meantime, decisions on oil contracts can only be made in accordance with paragraph 11 above.

SECTION II

Import by Turkey of petroleum and petroleum products originating in Iraq pursuant to paragraph 2 of resolution 986 (1995)

25. The import by Turkey of petroleum and petroleum products originating in Iraq will be undertaken in accordance with the requirements of paragraphs 2 and 6 of resolution 986 (1995), so as to meet the pipeline tariff charges, verified as reasonable by the independent inspection agents, after the deduction of the percentage referred to in paragraph 2 of resolution 705 (1991) for the Compensation Fund. The import of petroleum and petroleum products will be authorized and monitored in accordance with the relevant provisions of section I of the present procedures.

SECTION III

Export to Iraq of humanitarian supplies

26. The Government of Iraq will prepare a categorized list of humanitarian supplies which it intends to purchase and import pursuant to resolution 986 (1995). This list will be submitted to the Secretary-General together with the distribution plan referred to in paragraph 8 (a) (ii) of the resolution.

27. After approving the distribution plan, the Secretary-General will forward the list, which constitutes a part of the plan, to the Committee, and will make it known to all States.

28. The Government of Iraq or the United Nations Inter-Agency Humanitarian Programme will contract directly with suppliers to arrange the purchase of humanitarian supplies, and will conclude the appropriate contractual arrangements.

29. Export to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) financed from the Iraq account shall be undertaken in accordance with the following provisions.

30. Applications for each export of humanitarian supplies, to be financed from the Iraq account consistent with paragraph 22 of the Memorandum of Understanding, shall be submitted to the Committee at the request of the Government of Iraq by the exporting States with all relevant documentation,

including the concluded contractual arrangements. Payment from the Iraq account can take place only for items included in the categorized list, unless the Committee exceptionally decides otherwise on a case-by-case basis.

31. The Committee will take action on such applications in accordance with paragraph 20 of resolution 687 (1991), its existing procedures and the provisions of this section. The Committee will inform the Government of Iraq, the requesting States, the Secretary-General and, if appropriate, the independent inspection agents at the intended point(s) of entry into Iraq of the actions taken on the applications submitted.

32. Such applications shall be submitted as follows:

(a) Medicines and Health Supplies

The exporting State informs the Committee that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to this communication.

(b) Foodstuffs

The exporting State notifies the Committee. The notification must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the notification.

(c) Other Materials and Supplies for Essential Civilian Needs

The exporting State submits an application for approval by the Committee under its no-objection procedure. The application must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the application.

33. Experts in the Secretariat examine each contract, in particular the details of price and value, and whether the items to be exported are on the categorized list referred to above. They will also take into consideration the reports of the Secretary-General provided for in paragraph 20 above, in order to check availability of funds in the Iraq account for the contract. They will inform the Committee of their findings.

34. The Committee acts upon the findings of the experts as set forth below:

(a) Medicines and Health Supplies

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is

not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the medicines and health supplies can be shipped anyway if the exporter so desires.

(b) Foodstuffs

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the foodstuffs can be shipped anyway if the exporter so desires.

(c) Other Materials and Supplies for Essential Civilian Needs

If the Committee approves the supplies, under its no-objection procedure within seven days, and if the contract is found in order, the Committee informs the parties concerned of the approval and that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, but the Committee approves the supplies under its no-objection procedure, it informs the parties concerned that payment cannot be made from the Iraq account, but that the supplies are approved and can be shipped anyway if the exporter so desires. If the Committee cannot approve the supplies, whether or not the contract is found in order, it informs the parties concerned that the supplies cannot be shipped.

35. When the Committee has informed the parties concerned that the exporter is eligible for payment from the Iraq account, the Central Bank of Iraq will request the bank holding the Iraq account to open an irrevocable, non-transferable, non-assignable (except to the supplier's bank for the repayment of financing for the purchase of the humanitarian supplies) letter of credit for the account of the Iraqi purchaser in favour of the supplier, which will be available only at the bank holding the Iraq account, and provide for payment from the Iraq account. Such requests shall be submitted by the bank holding the Iraq account to the Secretary-General for expeditious approval, so that payment from the Iraq account can be made without delay. The letter of credit will require as condition of payment the submission to the bank holding the Iraq account of the usual commercial documentation, and of the following documents: a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account, and a standardized confirmation by the Secretary-General of the arrival of the humanitarian supplies in Iraq.

36. The arrival of the humanitarian supplies in Iraq will be confirmed by independent inspection agents appointed by the Secretary-General pursuant to resolution 986 (1995) and stationed at relevant entry points and other locations in Iraq as referred to in paragraph 26 of the Memorandum of Understanding. The independent inspection agents will add their authenticated confirmation of arrival to a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account and to a copy of the invoice, and will inform the Secretary-General in

accordance with paragraph 8 (a) (iii) of Security Council resolution 986 (1995). This information should be given without delay and in any case within 24 hours. The inspection agents will report all irregularities to the Secretary-General and to the Committee. If the problem is related to normal commercial practice, the Committee and the Government of Iraq will be informed but normal commercial resolution practices will go forth. Performance bonds may not be opened. Payments in favour of the purchaser resulting from normal commercial resolution practices should be made to the Iraq account. If the matter is of serious concern, the independent inspection agents will hold the shipment in question, pending guidance from the Committee. The Committee will make every effort to provide such guidance in the most expeditious manner.

37. The bank holding the Iraq account shall effect payment under any letter of credit only if all documents (listed in para. 35 above) stipulated in the letter of credit are presented to it and the terms and conditions of any such letter of credit are complied with. When specified in the contract and the supporting documents, payment can be made in several instalments corresponding to actual deliveries to Iraq. Documentary discrepancies can only be waived by the Secretary-General.

38. The provisions of this section are without prejudice to the application of the existing procedures of the Committee for goods which are not supplied pursuant to resolution 986 (1995).

SECTION IV

Export to Iraq of parts and equipment, and financial transactions related thereto, pursuant to paragraphs 9 and 10 of resolution 986 (1995)

39. The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq will be undertaken in accordance with the procedures set out in section III of the present procedures. Requests for such exports to Iraq will be approved by the Committee on a case-by-case basis under its no-objection procedure. The Committee may request relevant United Nations personnel in Iraq to verify that the equipment exported to Iraq pursuant to paragraph 9 of resolution 986 (1995) is used only for the purposes permitted.

40. In accordance with paragraph 10 of resolution 986 (1995), until proceeds from the sale of petroleum and petroleum products are deposited into the Iraq account, the Committee may approve, on a case-by-case basis, the exceptional financing of the export of parts and equipment by letters of credit drawn against future oil sales. The Committee will seek, if necessary, the advice of the overseers in considering such requests. In this case the provisions of paragraph 35 above shall apply.

SECTION V

Approval of reasonable expenses other than expenses payable in Iraq

41. Pursuant to paragraph 8 (f) of resolution 986 (1995), the Committee can approve, under its no-objection procedure, the financing from the Iraq account of reasonable expenses, other than expenses payable in Iraq, which are determined by it to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 of resolution 986 (1995) or to the export to Iraq of the parts and equipment referred to in paragraph 9 of resolution 986 (1995), and of activities directly necessary therefor.

42. Requests for meeting the expenses referred to in the previous paragraph will be submitted by the Government of Iraq together with all necessary documentation, and will be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the independent inspection agents in reaching a decision.

SECTION VI

General provisions

43. The Secretariat will arrange for the establishment of the appropriate communication links to permit immediate communication among the overseers, the independent inspection agents, the bank holding the Iraq account and the coordinator of the Multinational Interception Forces operating in the area under resolution 665 (1990), as well as with the Central Bank of Iraq and SOMO.

44. The Secretary-General reports regularly to the Committee on the details of the disbursements made pursuant to paragraph 8 of resolution 986 (1995).

45. Letters of credit mentioned in these procedures should conform with the Uniform Customs and Practice for Documentary Credit.

46. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

Appendix 1

Standard application form to request approval of contracts for sale of Iraqi petroleum and/or petroleum products

The attached contract with the Iraqi State Oil Marketing Organization (SOMO) for the purchase of petroleum and/or petroleum products is submitted for approval in accordance with paragraph 1 (a) of Security Council resolution 986 (1995) and the procedures of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, adopted at its ... meeting held on ... (S/....).

Information about the purchaser

Name of purchasing entity:

Place of registration:

Address:

Contact person:

Telephone: Telefax: Telex:

Summary of contract terms

Quantity of crude petroleum and/or petroleum products:

Quality of crude petroleum and/or petroleum products:

Pricing formula and/or price per U.S. barrel:

Date(s) of loading at Ceyhan:

Date(s) of loading at Mina al-Bakr:

Name of vessel and destination (if available):

Payment details (draft irrevocable letter of credit, etc.)

Please find attached a copy of the contract, draft irrevocable letter of credit to be opened and all supporting documents.

Signature
Name of signatory
Title

Appendix 2

Information to be included in the letter of credit

1. As provided for in paragraph 2 of Annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995), signed on 20 May 1996, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the 'Iraq Account' with .... Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

2. Other information to be included:

- nature of the petroleum or petroleum product
- forecast quantity of petroleum or petroleum product
- date of loading
- unit price
- forecast amount of the transaction